

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

U.S. Ethernet Innovations, LLC,	)	
	)	
Plaintiff,	)	
	)	Civil Action File
vs.	)	No. 6:09-cv-448-JDL
	)	
Acer, Inc.; Acer America Corporation; Apple,	)	
Inc.; ASUS Computer International; ASUSTeK	)	
Computer Inc.; Dell Inc.; Fujitsu Ltd.; Fujitsu	)	
America, Inc.; Gateway, Inc.; Hewlett Packard	)	
Co.; Sony Corporation; Sony Corporation of	)	
America; Sony Electronics Inc.; Toshiba	)	
Corporation; Toshiba America, Inc.; and	)	
Toshiba America Information Systems, Inc.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

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**PLAINTIFF U.S. ETHERNET INNOVATIONS, LLC’S ANSWER TO THE  
FIRST AMENDED COMPLAINT IN INTERVENTION OF INTEL CORPORATION**

Plaintiff, U.S. Ethernet Innovations, LLC (“USEI”), pursuant to Federal Rule of Civil Procedure 12, hereby makes and files this Answer to the First Amended Counterclaims of Intel Corporation (“Intel”). Unless specifically admitted herein, USEI denies each and every allegation, matter, and thing contained in the Counterclaims and each and every part and portion thereof.

1. USEI admits the Intel seeks a declaratory judgment of non-infringement and invalidity. USEI denies that Intel is entitled to this or any other relief.

**PARTIES**

2. USEI admits that Intel is a Delaware corporation with its worldwide headquarters in Santa Clara, California. USEI further admits that some products in this suit contain components that appear to have been supplied by Intel. USEI is without knowledge or

information sufficient to form a belief as to the truth of the remaining allegations in paragraph 2 and therefore denies the same.

3. Admitted.

### **JURISDICTION AND VENUE**

4. USEI admits that this Court has subject matter jurisdiction over this action.

5. USEI admits that venue is proper in the Eastern District of Texas.

6. USEI admits, for the purposes of Intel's Complaint in Intervention only, that this Court has personal jurisdiction over USEI.

### **BACKGROUND AND INTEL'S INTEREST IN THIS LAWSUIT**

7. USEI admits it filed a complaint in Texas against Acer, Inc., Acer America Corporation, Apple, Inc., ASUS Computer International, ASUSTeK Computer Inc., Dell Inc., Fujitsu Ltd., Fujitsu America, Inc., Gateway, Inc., Hewlett Packard Co., HP Development Company LLC, Sony Corporation, Sony Corporation of America, Sony Electronics Inc., Toshiba Corporation, Toshiba America, Inc., and Toshiba America Information Systems, Inc for infringing United States Patent Nos. 5,307,459, 5,434,872, 5,732,094, and 5,299,313 (respectively, the "459 Patent, the '872 Patent, the '094 Patent, and the '313 Patent"; collectively, the "Asserted Patents"). USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 7 and therefore denies the same.

8. USEI admits that some of the products USEI has accused of infringement in this action have components that appear to have been supplied by Intel. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 8 and therefore denies the same.

9. USEI admits that some of the products USEI has accused of infringement in this action have components that appear to have been supplied by Intel. USEI denies the remaining allegations in paragraph 9.

10. USEI admits that some of the products USEI has accused of infringement in this action have components that appear to have been supplied by Intel. USEI states that its Complaint in this action speaks for itself. USEI denies the remaining allegations in paragraph 10.

11. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 and therefore denies the same.

12. USEI admits that an actual controversy exists between Intel and USEI regarding Intel's infringement of the Asserted Patents. USEI denies the remaining allegations in paragraph 12.

### **COUNT 1**

#### **DECLARATORY JUDGMENT REGARDING U.S. PATENT NO. 5,307,459**

13. USEI incorporates by reference its responses to paragraphs 1 through 12 as if fully restated herein.

14. Admitted.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

**INEQUITABLE CONDUCT AS TO U.S. PATENT NO. 5,307,459**

20. USEI admits that Intel has made certain unspecified and unsupported allegations.

USEI denies that Intel's claims have merit.

21. USEI admits that 3Com Corporation is the recited assignee for the following patent applications: European Patent Application No. 0607412; U.S. Patent No. 5,319,752; U.S. Patent No. 5,530,874; European Patent Application No. 0682791; and U.S. Patent No. 5,412,782 (the '782 Patent). USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 21 and therefore denies the same.

22. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 and therefore denies the same.

23. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 and therefore denies the same.

24. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 and therefore denies the same.

25. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 and therefore denies the same.

26. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 and therefore denies the same.

27. Denied.

- a. USEI admits that Application No. 07/920,898 (the "'459 Application") was filed on July 28, 1992; that the '459 Application recites W. Paul Sherer, David R. Brown, and Lai-Chin Lo as named inventors; that the '459 Application recites 3Com Corporation as the named assignee; that the '459 Application recites

Mark Haynes as a prosecuting attorney; and that the '459 Application led to the '459 Patent, which issued on April 26, 1994. USEI denies the remaining allegations of paragraph a.

The '872 Patent, PCT, and EP Applications

- b. Denied.
- c. USEI admits that Application No. 07/920,893 (the '872 Application) and the '459 Application recite the same filing date; recite Brown as a named inventor; and recite 3Com Corporation as assignee. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph c and therefore denies the same.
- d. USEI admits that the '872 Patent recites Sherer as a named inventor.
- e. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph e and therefore denies the same.
- f. USEI admits that the '459 Application recites a different examiner than recited by Application No. 07/920,893 ("872 Application"). USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph f and therefore denies the same.
- g. The '459 Patent and the '872 Patent speak for themselves. USEI denies the remaining allegations in paragraph g.
- h. USEI admits that the '459 Application file history contains a Notice of Allowability dated October 14, 1993. The Notice of Allowability speaks for itself.

- i. USEI admits that the '872 Application file history contains an Office Action dated October 26, 1993. The Office Action speaks for itself. USEI denies the remaining allegations of paragraph i.
- j. USEI admits that the '872 Application file history contains an Office Action dated October 26, 1993. The Office Action speaks for itself. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph j and therefore denies the same.
- k. USEI admits that '872 Application file history contains a declaration by Petersen and Brown, who are named inventors of the '459 Application. The declaration speaks for itself.
- l. USEI admits that the '872 Application file history contains an Office Action dated October 26, 1993. The Office Action speaks for itself. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph l and therefore denies the same.
- m. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph m and therefore denies the same.
- n. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph n and therefore denies the same.
- o. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph o and therefore denies the same.
- p. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph p and therefore denies the same.

q. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph q and therefore denies the same.

r. Denied.

The '752 Patent and PCT Applications

s. Denied.

t. USEI admits that the '752 Application recites September 18, 1992 as its filing date. USEI further admits that the '752 Application and the '459 Application recite Lai-Chin Lo as a named inventor and recite the same assignee. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph t and therefore denies the same.

u. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph u and therefore denies the same.

v. USEI admits that the '459 Application and Application No. 07/947,773 ("752 Application") recite different examiners. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph v and therefore denies the same.

w. The '459 Patent and the '752 Patent speak for themselves. USEI denies the remaining allegations in paragraph w.

x. The '752 Application and the '459 Application speak for themselves. USEI denies the remaining allegations in paragraph x.

y. USEI admits that the '752 Application file history contains Office Actions dated January 26, 1993 and July 15, 1993. The Office Actions speak for themselves. USEI denies the remaining allegations in paragraph y.

z. USEI admits that the '752 Application file history recites the disclosure of U.S. Patents 4,546,467, 4,680,581, 4,866,666, 5,101,402, and 5,103,446 ("'752 References"). USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph z and therefore denies the same.

aa. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph aa and therefore denies the same.

bb. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph bb and therefore denies the same.

cc. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph cc and therefore denies the same.

dd. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph dd and therefore denies the same.

ee. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ee and therefore denies the same.

ff. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ff and therefore denies the same.

gg. Denied.

The '406 Patent and PCT Applications

hh. Denied.

ii. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ii and therefore denies the same.



- jj. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph jj and therefore denies the same.
- kk. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph kk and therefore denies the same.
- ll. The '459 Patent speaks for itself. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph ll and therefore denies the same.
- mm. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph mm and therefore denies the same.
- nn. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph nn and therefore denies the same.
- oo. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph oo and therefore denies the same.
- pp. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph pp and therefore denies the same.
- qq. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph qq and therefore denies the same.
- rr. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph rr and therefore denies the same.
- ss. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ss and therefore denies the same.
- tt. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph tt and therefore denies the same.

uu. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph uu and therefore denies the same.

vv. Denied.

The '874 Patent and PCT Applications

ww. Denied.

xx. USEI admits that Application No. 08/012,561 ("874 Application") and the '459 Application recite W. Paul Sherer as a named inventor and 3Com Corporation as assignee. USEI further admits that the '874 Application led to U.S. Patent 5,530,874 ("874 Patent"). USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph xx and therefore denies the same.

yy. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph yy and therefore denies the same.

zz. USEI admits that the '459 Application and the '874 Application recite different examiners. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph zz and therefore denies the same.

aaa. The '459 Patent and the '874 Patent speak for themselves. USEI denies the remaining allegations in paragraph aaa.

bbb. The '459 Patent and the '874 Patent speak for themselves. USEI denies the remaining allegations in paragraph bbb.

ccc. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ccc and therefore denies the same.

ddd. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ddd and therefore denies the same.

eee. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph eee and therefore denies the same.

fff. Denied.

The '627 Patent and PCT Applications

ggg. Denied.

hhh. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph hhh and therefore denies the same.

iii. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph iii and therefore denies the same.

jjj. The '459 Patent speaks for itself. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph jjj and therefore denies the same.

kkk. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph kkk and therefore denies the same.

lll. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph lll and therefore denies the same.

mmm. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph mmm and therefore denies the same.

nnn. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph nnn and therefore denies the same.

ooo. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ooo and therefore denies the same.

ppp. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ppp and therefore denies the same.

qqq. Denied.

The '313 Patent, PCT, and EP Applications

rrr. Denied.

sss. USEI admits that the '313 Application and the '459 Application recite the same filing date; Sherer, Brown, and Lo as named inventors; and the same assignee. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph sss and therefore denies the same.

ttt. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ttt and therefore denies the same.

uuu. USEI admits that the '459 Application and Application No. 07/921,519 ("313 Application") recite the same examiner. USEI admits that the Federal Circuit issued a ruling in *McKesson Info. Solutions, Inc. v. Bridge Med., Inc.*, 487 F.3d 897, 925 (Fed. Cir. 2007). The ruling speaks for itself. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph uuu and therefore denies the same.

vvv. USEI admits that the '313 Application file history contains a Notice of Allowance dated September 21, 1993. The Notice of Allowance speaks for itself.

www. USEI admits that the '459 Application file history recites the disclosure of the '313 Application. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph www and therefore denies the same

xxx. The '459 Patent and the '313 Patent speak for themselves. USEI denies the remaining allegations in paragraph xxx.

yyy. USEI admits that the '313 Application file history recites the disclosure of U.S. Patent No. 4,672,570. The patent speaks for itself. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph yyy and therefore denies the same.

zzz. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph zzz and therefore denies the same.

aaaa. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph aaaa and therefore denies the same.

bbbb. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph bbbb and therefore denies the same.

cccc. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph cccc and therefore denies the same.

dddd. Denied.

The '782 Patent Application

eeee. Denied.

ffff. USEI admits that Application No. 07/907,946 (the '782 Application) recites July 2, 1992 as its filing date; Eric H. Willgohs as a prosecuting attorney;

and Paul W. Sherer as a named inventor. USEI further admits that the '782 Application and the '872 Application recite the same assignee. USEI denies the remaining allegations in paragraph ffff.

gggg. USEI admits that the '459 Application recites a different examiner than recited by the '782 Application.

hhhh. U.S. Patent 5,412,782 speaks for itself. USEI denies the remaining allegations in paragraph hhhh.

iiii. USEI admits that the file history of Application No. 07/907,946 ("782 Application") contains an Office Action dated January 14, 1994. The Office Action speaks for itself. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph iiii and therefore denies the same.

jjjj. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph jjjj and therefore denies the same.

kkkk. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph kkkk and therefore denies the same.

llll. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph llll and therefore denies the same.

mmmm. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph mmmm and therefore denies the same

nnnn. Denied.

Intel 82586 local area network coprocessor

oooo. Denied

pppp. U.S. Patent 5,307,459 (“‘459 Patent”) speaks for itself. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph pppp and therefore denies the same.

qqqq. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph qqqq and therefore denies the same.

rrrr. Denied.

ssss. Denied.

tttt. Denied.

uuuu. Denied.

vvvv. Denied.

www. Denied.

xxxx. Denied.

yyyy. USEI admits that the ‘459 Patent recites U.S. Patents 4,852,088, 4,907,225, and 5,101,477. USEI further admits that the ‘459 Application file history contains a Notice of Allowance dated October 14, 1993. The Notice of Allowance speaks for itself. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph yyyy and therefore denies the same.

zzzz. Denied.

## **COUNT 2**

### **DECLARATORY JUDGMENT REGARDING U.S. PATENT NO. 5,434,872**

28. USEI incorporates by reference its responses to paragraphs 1-27 as if fully restated herein.

29. Admitted.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

**INEQUITABLE CONDUCT AS TO U.S. PATENT NO. 5,434,872**

34. USEI incorporates by reference its responses to paragraphs 20-26 as if fully restated herein.

35. Denied.

- a. USEI admits that the '872 Application and the '459 Application recite July 28, 1992 as their filing date; Mark Haynes as a prosecuting attorney; David R. Brown and W. Paul Sherer as named inventors; and 3Com Corporation as assignee. USEI denies the remaining allegations in paragraph a.

**The '459 Patent, PCT, and EP Applications**

- b. Denied
- c. USEI admits that the '872 Application and the '459 Application recite the same filing date; Brian Petersen, David R. Brown and W. Paul Sherer as named inventors; and 3Com Corporation as assignee. USEI denies the remaining allegations in paragraph c.
- d. USEI denies that the European Patent Application EP0607412 ("EP0607412") was filed on February 25, 1994. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph d and therefore denies the same.



- e. USEI admits that the '872 Application file history recites a different examiner than the '459 Application file history. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph e and therefore denies the same.
- f. The '459 Patent and the '872 Patent speak for themselves. USEI denies the remaining allegations in paragraph f.
- g. USEI admits that the '459 Patent recites U.S. Patents 4,852,088, 4,907,225, and 5,101,477. USEI further admits that the '459 Application file history contains a Notice of Allowance dated October 14, 1993. The Notice of Allowance speaks for itself. USEI denies the remaining allegations in paragraph g.
- h. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph h and therefore denies the same.
- i. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph i and therefore denies the same.
- j. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph j and therefore denies the same.
- k. USEI admits that the '872 Application file history contains a Response dated February 23, 1994. The Response speaks for itself. USEI denies the remaining allegations in paragraph k.
- l. Denied.
- m. USEI admits that U.S. Patent 5,732,094 ("094 Patent) is a continuation of the '872 Application. USEI further admits that the file history of Application No.

08/715,253 ("094 Application") contains an Office Action dated March 19, 1996.

The Office Action speaks for itself. USEI denies the remaining allegations in paragraph m.

- n. USEI admits that the European Patent Application EP0607412 ("EP0607412") recites the disclosure of "Early Interrupt for Disk Controller," IBM Technical Disclosure Bulletin, vol. 25, no. 9, February 1983, p. 4703 (IBM). USEI denies that EP0607412 recites the disclosure of U.S. Patent 5,179,709.

USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph n and therefore denies the same.

- o. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph o and therefore denies the same.

- p. USEI admits that the '872 Patent recites Petersen, Brown, and Sherer as named inventors. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph p and therefore denies the same.

- q. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph q and therefore denies the same.

- r. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph r and therefore denies the same.

- s. Denied.

The '752 Patent, PCT, and EP Applications

- t. Denied.

- u. USEI admits that the '752 Application recites September 18, 1992 as its filing date. USEI further admits that the '752 Application and the '872 Application recite Lai-Chi Lo as a named inventor and recite the same assignee. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph u and therefore denies the same.
- v. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph v and therefore denies the same.
- w. USEI admits that the '872 Application file history recites a different examiner than the '752 Application file history. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph w and therefore denies the same.
- x. Denied.
- y. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph y and therefore denies the same.
- z. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph z and therefore denies the same.
- aa. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph aa and therefore denies the same.
- bb. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph bb and therefore denies the same.
- cc. USEI admits that the '872 Patent recites Petersen as a named inventor. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph cc and therefore denies the same.

dd. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph dd and therefore denies the same.

ee. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ee and therefore denies the same.

ff. Denied.

The '406 Patent and PCT Applications

gg. Denied.

hh. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph hh and therefore denies the same.

ii. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ii and therefore denies the same.

jj. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph jj and therefore denies the same.

kk. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph kk and therefore denies the same.

ll. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ll and therefore denies the same.

mm. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph mm and therefore denies the same.

nn. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph nn and therefore denies the same.

oo. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph oo and therefore denies the same.

pp. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph pp and therefore denies the same.

qq. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph qq and therefore denies the same.

rr. USEI admits that the '872 Patent recites Petersen and Brown as named inventors. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph rr and therefore denies the same.

ss. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ss and therefore denies the same.

tt. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph tt and therefore denies the same.

uu. Denied.

The '627 Patent and PCT Applications

vv. Denied.

ww. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ww and therefore denies the same.

xx. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph xx and therefore denies the same.

yy. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph yy and therefore denies the same.

zz. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph zz and therefore denies the same.

aaa. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph aaa and therefore denies the same.

bbb. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph bbb and therefore denies the same.

ccc. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ccc and therefore denies the same.

ddd. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ddd and therefore denies the same.

eee. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph eee and therefore denies the same.

fff. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph fff and therefore denies the same.

ggg. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ggg and therefore denies the same.

hhh. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph hhh and therefore denies the same.

iii. Denied.

The '874 Patent, PCT, and EP Applications

jjj. Denied.

kkk. USEI admits that the '874 Application recites February 2, 1993 as its filing date. USEI further admits that the '874 Application and the '872 Application recite W. Paul Sherer as a named inventor and recite the same assignee. USEI is without knowledge or information sufficient to form a belief as

to the truth of the remaining allegations in paragraph kkk and therefore denies the same.

lll. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ll and therefore denies the same.

mmm. USEI admits that the '872 Application file history recites a different examiner than the '874 Application. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph mmm and therefore denies the same.

nnn. Denied.

ooo. USEI admits that the '874 Application file history recites U.S. Patents 3,905,025, 4,349,872, 4,807,117, 4,847,752, 4,987,535, 5,146,595, 5,161,228, 5,179,704, 5,193,195, 5,283,904, and 5,349,667. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph ooo and therefore denies the same.

ppp. USEI admits that the '874 Application file history contains Office Actions dated September 20, 1994 and May 19, 1995. The Office Actions speak for themselves.

qqq. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph qq and therefore denies the same.

rrr. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph rrr and therefore denies the same.

sss. Denied.

ttt. USEI admits that the '872 Patent recites Petersen as a named inventor.

USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph ttt and therefore denies the same.

uuu. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph uuu and therefore denies the same.

The '313 Patent, PCT, and EP Applications

vvv. Denied.

www. USEI admits that Application No. 07/921,519 ("313 Application") was filed on the same date as the '872 Application; that three of named inventors on the '313 Application are the same as on the '872 Application; that the assignee is the same for both applications; and that the '313 Application led to the '313 Patent. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph www and therefore denies the same.

xxx. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph xxx and therefore denies the same.

yyy. USEI admits that the '872 Application recites a different examiner than recited by the '313 Patent. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph yyy and therefore denies the same.

zzz. USEI admits that the '313 Application file history contains a Notice of Allowance dated September 21, 1993. The Notice of Allowance speaks for itself.



aaaa. USEI admits that the '872 Application file history discloses the copendency of the '313 Application. USEI denies '872 Application file history contains an Office Action Response dated October 11, 1994. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph aaaa and therefore denies the same.

bbbb. The '872 Patent and the '313 Patent speak for themselves. USEI denies the remaining allegations in paragraph bbbb.

cccc. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph cccc and therefore denies the same.

dddd. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph dddd and therefore denies the same.

eeee. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph eeee and therefore denies the same.

ffff. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ffff and therefore denies the same.

gggg. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph gggg and therefore denies the same.

hhhh. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph hhhh and therefore denies the same.

iiii. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph iiii and therefore denies the same.

jjjj. Denied.

The '782 Patent Application

kkkk. Denied.

llll. USEI admits that Application No. 07/907,946 (“782 Application”) led to U.S. patent 5,412,782 (“782 Patent”) and that the ‘782 Application was filed on July 2, 1992 by Eric H. Willgoos. USEI admits that the ‘782 Patent recites Paul W. Sherer as a named inventor. USEI further admits that the ‘782 Patent and the ‘872 Patent recite the same assignee. USEI denies the remaining allegations in paragraph llll.

mmmm. USEI admits that the ‘872 Application recites a different examiner than recited by the ‘782 Application.

nnnn. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph nnnn and therefore denies the same.

oooo. USEI admits that the ‘782 Application file history recites U.S. Patents 4,768,190, 5,210,829, and 5,121,479. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph oooo and therefore denies the same.

pppp. USEI admits that the ‘782 Application file history contains Office Actions dated January 14, 1994 and July 7, 1994. The Office Actions speak for themselves.

qqqq. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph qqqq and therefore denies the same.

rrrr. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph rrrr and therefore denies the same.

ssss. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ssss and therefore denies the same.

tttt. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph tttt and therefore denies the same.

uuuu. Denied.

Intel 82586 local area network coprocessor

vvvv. Denied.

www. U.S. Patent 5,434,872 (“872 Patent”) speaks for itself. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph www and therefore denies the same.

xxxx. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph xxxx and therefore denies the same.

yyyy. Denied.

zzzz. Denied.

aaaaa. Denied.

bbbbb. Denied.

cccc. Denied.

ddddd. Denied.

eeee. Denied.

ffff. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ffff and therefore denies the same.

ggggg. Denied.

**COUNT 3**

**DECLARATORY JUDGMENT REGARDING U.S. PATENT NO. 5,732,094**

36. USEI incorporates by reference its responses to paragraphs 1-35 as if fully restated herein.

37. Admitted.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

**INEQUITABLE CONDUCT AS TO U.S. PATENT NO. 5,732,094**

42. USEI incorporates by reference its responses to paragraphs 20-26 as if fully restated herein.

43. Denied.

- a. USEI admits that Application No. 08/715,253 (“’094 Application”) recites its filing date as September 16, 1996; recites Mark Haynes as a prosecuting attorney; W. Paul Sherer and David R. Brown as named inventors; and 3Com Corporation as assignee. USEI denies the remaining allegations in paragraph a.

**The ‘459 Patent, PCT, and EP Applications**

b. Denied.

- c. USEI admits that the ‘094 Patent recites three of the four named inventors recited by the ‘459 Patent (Petersen, Brown, and Sherer) and the same assignee. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph c and therefore denies the same.

- d. USEI admits that European Patent Application EP0607412 (“EP0607412”) recites PCT/US1993/07056 as the international application number. USEI denies that EP0607412 was filed on February 24, 1994. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph d and therefore denies the same.
- e. USEI admits that the ‘094 Application file history recites a different examiner than recited by the ‘459 Patent. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph e and therefore denies the same.
- f. Denied.
- g. USEI admits that the ‘094 Application file history contains a Preliminary Amendment dated March 3, 1995. The Preliminary Amendment speaks for itself. USEI further admits that the ‘872 Application file history contains a Response dated March 2, 1994. The Response speaks for itself. USEI denies the remaining allegations in paragraph g.
- h. USEI admits that the ‘459 Application file history contains a Notice of Allowability dated October 14, 1993. The Notice of Allowability speaks for itself. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph h and therefore denies the same.
- i. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph i and therefore denies the same.

j. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph j and therefore denies the same.

k. Denied.

l. USEI admits that EP0607412 recites "Early Interrupt for Disk Controller," IBM Technical Disclosure Bulletin, vol. 25, no. 9, February 1983, p. 4703 (IBM) as a reference. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph l and therefore denies the same.

m. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph m and therefore denies the same.

n. USEI admits that the '094 Patent recites Petersen, Brown, and Sherer as named inventors. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph n and therefore denies the same.

o. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph o and therefore denies the same.

p. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph p and therefore denies the same.

q. Denied.

The '752 Patent, PCT, and EP Applications

r. Denied.

s. USEI admits that the '752 Application recites September 18, 1992 as its filing date. USEI further admits that the '752 Application and the '094

Application recite the same assignee. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraphs and therefore denies the same.

t. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph t and therefore denies the same.

u. USEI admits that the '094 Application file history recites a different examiner than the '459 Application. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph u and therefore denies the same.

v. Denied.

w. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph w and therefore denies the same.

x. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph x and therefore denies the same.

y. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph y and therefore denies the same.

z. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph z and therefore denies the same.

aa. USEI admits that the '094 Patent recites Petersen as a named inventor. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph aa and therefore denies the same.

bb. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph bb and therefore denies the same.

cc. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph cc and therefore denies the same.

dd. Denied.

The '406 Patent and PCT Applications

ee. Denied.

ff. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ff and therefore denies the same.

gg. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph gg and therefore denies the same.

hh. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph hh and therefore denies the same.

ii. Denied.

jj. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph jj and therefore denies the same.

kk. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph kk and therefore denies the same.

ll. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ll and therefore denies the same.

mm. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph mm and therefore denies the same.

nn. USEI admits that the '094 Patent recites Petersen and Brown as named inventors. USEI is without knowledge or information sufficient to form a belief



as to the truth of the remaining allegations in paragraph nn and therefore denies the same.

oo. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph oo and therefore denies the same.

pp. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph pp and therefore denies the same.

qq. Denied.

The '627 Patent and PCT Applications

rr. Denied.

ss. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ss and therefore denies the same.

tt. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph tt and therefore denies the same.

uu. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph uu and therefore denies the same.

vv. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph vv and therefore denies the same.

ww. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ww and therefore denies the same.

xx. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph xx and therefore denies the same.

yy. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph yy and therefore denies the same.

zz. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph zz and therefore denies the same.

aaa. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph aaa and therefore denies the same.

bbb. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph bbb and therefore denies the same.

ccc. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ccc and therefore denies the same.

ddd. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ddd and therefore denies the same.

eee. Denied.

The '874 Patent, PCT, and EP Applications

fff. Denied.

ggg. USEI admits that the '874 Application recites February 2, 1993 as its filing date. USEI further admits that the '874 Application and the '094 Application recite W. Paul Sherer as a named inventor and recite the same assignee. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph ggg and therefore denies the same.

hhh. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph hhh and therefore denies the same.

iii. USEI admits that the '094 Application file history recites a different examiner than the '874 Application. USEI is without knowledge or information

sufficient to form a belief as to the truth of the remaining allegations in paragraph iii and therefore denies the same.

jjj. Denied.

kkk. USEI admits that the '094 Application file history contains a Preliminary Amendment dated March 3, 1995. The Preliminary Amendment speaks for itself. USEI further admits that the '872 Application file history contains a Response dated March 2, 1994. The Response speaks for itself. USEI denies the remaining allegations in paragraph kkk.

lll. USEI admits that the '874 Patent recites U.S. Patents 3,905,025, 4,349,872, 4,631,659, 4,768,149, 4,807,117, 4,847,752, 4,961,161, 4,987,535, 5,146,595, 5,161,228, 5,179,704, 5,193,195, 5,283,904, and 5,349,667, and articles, Chiang, Al, "An EtherStar is Born", ESD: Magazine, Digital Design Publishing Company, March 1988; 1900 West Park Drive, Westborough, MA 01581; and EtherStar Ethernet/Starlan Controller, Fujitsu MB86950, May, 1988 ("'874 References"). USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph lll and therefore denies the same.

mmm. USEI admits that the '874 Application file history contains an Information Disclosure Statement ("'874 IDS") dated January 5, 1996. The '874 IDS speaks for itself.

nnn. The '874 References speak for themselves. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph nnn and therefore denies the same.

ooo. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ooo and therefore denies the same.

ppp. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ppp and therefore denies the same.

qqq. USEI admits that the '094 Patent recites Petersen and Sherer as named inventors. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph qqq and therefore denies the same.

rrr. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph rrr and therefore denies the same.

sss. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph sss and therefore denies the same.

ttt. Denied.

The '313 Patent, PCT, and EP Applications

uuu. Denied.

vvv. USEI admits that the '313 Application recites July 28, 1992 as its filing date. USEI further admits that the '313 Application and the '094 Application recite Sherer and Brown as named inventors and recite 3Com Corporation as assignee. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph vvv and therefore denies the same.

www. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph www and therefore denies the same.

xxx. USEI admits that the '313 Application file history contains a Notice of Allowance dated September 21, 1993. The Notice of Allowance speaks for itself.

yyy. USEI admits that the '872 Application file history recites the '313 Application. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph yyy and therefore denies the same.

zzz. The '094 Patent and the '313 Patent speak for themselves. USEI denies the remaining allegations in paragraph zzz.

aaaa. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph aaaa and therefore denies the same.

bbbb. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph bbbb and therefore denies the same.

cccc. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph cccc and therefore denies the same.

dddd. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph dddd and therefore denies the same.

eeee. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph eeee and therefore denies the same.

ffff. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ffff and therefore denies the same.

gggg. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph gggg and therefore denies the same.

hhhh. Denied.

The '782 Patent Application

iiii. Denied.

jjjj. USEI admits that the '782 Application recites July 2, 1992 as its filing date and Eric H. Willgohe as a prosecuting attorney. USEI further admits that the '782 Application and the '094 Application recite the same assignee. USEI denies the remaining allegations in paragraph jjjj.

kkkk. USEI admits that the '094 Application recites a different examiner than recited by the '782 Application.

llll. Denied.

mmmm. USEI admits that Application No. 07/907,946 ("782 Application") recites U.S. Patents 4,768,190, 5,210,829, and 5,121,479. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph mmmm and therefore denies the same.

nnnn. USEI admits that the '782 Application file history contains Office Actions dated January 14, 1994 and July 7, 1994. The Office Actions speak for themselves.

oooo. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph oooo and therefore denies the same.

pppp. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph pppp and therefore denies the same.

qqqq. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph qqqq and therefore denies the same.

rrrr. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph rrrr and therefore denies the same.

ssss. Denied.

Intel 82586 local area network coprocessor

tttt. Denied.

uuuu. U.S. Patent 5,732,094 (“094 Patent”) speaks for itself. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph uuuu and therefore denies the same.

vvvv. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph vvvv and therefore denies the same.

www. Denied.

xxxx. Denied.

yyyy. Denied.

zzzz. Denied.

aaaaa. Denied.

bbbbb. Denied.

ccccc. Denied.

dddd. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph dddd and therefore denies the same.

eeee. Denied.

**COUNT 4**

**DECLARATORY JUDGMENT REGARDING U.S. PATENT NO. 5,299,313**

44. USEI incorporates by reference its responses to paragraphs 1-43 as if fully restated herein.

45. Admitted

46. Denied.

47. Denied.

48. Denied.

49. Denied.

**INEQUITABLE CONDUCT AS TO U.S. PATENT NO. 5,299,313**

50. USEI incorporates by reference its responses to paragraphs 20-26 as if fully restated herein.

51. Denied.

- a. USEI admits that Application No. 07/921,519 (“313 Application”) was filed on July 28, 1992. USEI admits that the ‘313 Application recites Mark Haynes as a prosecuting attorney; 3Com Corporation as assignee; and Brian Petersen, W. Paul Sherer, David R. Brown, and Lai-Chin Lo as named inventors. USEI further admits that the ‘313 Patent issued on March 29, 1994. USEI denies the remaining allegations in paragraph a.

**The ‘872 Patent, PCT, and EP Applications**

- b. Denied.
- c. USEI admits that the ‘872 Application and the ‘313 Application recite the same filing date. USEI is without knowledge or information sufficient to form a



belief as to the truth of the remaining allegations in paragraph c and therefore denies the same.

- d. USEI admits that the '872 Patent recites Sherer as a named inventor.
- e. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph e and therefore denies the same.
- f. USEI admits that the '872 Application file history recites the '313 Application. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph f and therefore denies the same.
- g. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph g and therefore denies the same.
- h. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph h and therefore denies the same.
- i. USEI admits that the '313 Application file history recites a different examiner than the '872 Application file history. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph i and therefore denies the same.
- j. The '313 Patent and the '872 Patent speak for themselves. USEI denies the remaining allegations in paragraph j.
- k. The '872 Application and the '313 Application speak for themselves. USEI denies the remaining allegations in paragraph k.
- l. USEI admits the '872 Application file history contains an Office Action dated October 26, 1993. The Office Action speaks for itself.

- m. USEI admits that the '313 Application file history contains a Notice of Allowability dated September 21, 1993. The Notice of Allowability speaks for itself.
- n. USEI admits that the '313 Application file history contains a Notice of Allowability dated September 21, 1993. The Notice of Allowability speaks for itself.
- o. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph o and therefore denies the same.
- p. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph p and therefore denies the same.
- q. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph q and therefore denies the same.
- r. USEI admits that the '872 Application file history contains Office Actions dated October 26, 1993 and July 6, 1994. The Office Actions speak for themselves. USEI denies the remaining allegations in paragraph r.
- s. Denied.
- t. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph t and therefore denies the same.
- u. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph u and therefore denies the same.
- v. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph v and therefore denies the same.

w. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph w and therefore denies the same.

x. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph x and therefore denies the same.

y. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph y and therefore denies the same.

z. Denied.

The '752 Patent and PCT Applications

aa. Denied.

bb. USEI admits that the '752 Application recites September 18, 1992 as its filing date. USEI further admits that the '752 Application and the '313 Application recite the same assignee. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph bb and therefore denies the same.

cc. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph cc and therefore denies the same.

dd. USEI admits that the '313 Application recites a different examiner than recited by the '752 Application. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph dd and therefore denies the same.

ee. The '313 Patent and the '752 Patent speak for themselves. USEI denies the remaining allegations in paragraph ee.

ff. USEI admits that the '752 Application file history contains Office Actions dated January 26, 1993 and July 15, 1993. The Office Actions speak for themselves.

gg. USEI admits that the '752 Application file history recites U.S. Patents 4,546,467, 4,680,581, 4,866,666, 5,101,402, and 5,103,446. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph gg and therefore denies the same.

hh. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph hh and therefore denies the same.

ii. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ii and therefore denies the same.

jj. Denied.

kk. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph kk and therefore denies the same.

ll. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ll and therefore denies the same.

mm. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph mm and therefore denies the same.

nn. Denied.

The '406 Patent and PCT Applications

oo. Denied.

pp. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph pp and therefore denies the same.

qq. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph qq and therefore denies the same.

rr. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph rr and therefore denies the same.

ss. The '313 Patent speaks for itself. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph ss and therefore denies the same.

tt. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph tt and therefore denies the same.

uu. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph uu and therefore denies the same.

vv. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph vv and therefore denies the same.

ww. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ww and therefore denies the same.

xx. Denied.

yy. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph yy and therefore denies the same.

zz. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph zz and therefore denies the same.

aaa. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph aaa and therefore denies the same.

bbb. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph bbb and therefore denies the same.

ccc. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ccc and therefore denies the same.

ddd. Denied.

The '874 Patent and PCT Applications

eee. Denied.

fff. USEI admits that the '874 Application recites February 2, 1993 as its filing date. USEI further admits that the '874 Application and the '313 Application recite W. Paul Sherer as a named inventor and recite the same assignee. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph fff and therefore denies the same.

ggg. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ggg and therefore denies the same.

hhh. USEI admits the '313 Application recites a different examiner than recited by the '874 Application. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph hhh and therefore denies the same.

iii. The '313 Patent and the '874 Patent speak for themselves. USEI denies the remaining allegations in paragraph iii.

jjj. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph jjj and therefore denies the same.

kkk. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph kkk and therefore denies the same.

lll. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph lll and therefore denies the same.

mmm. Denied.

The '627 Patent and PCT Applications

nnn. Denied.

ooo. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ooo and therefore denies the same.

ppp. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ppp and therefore denies the same.

qqq. The '313 Patent speaks for itself. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph qqg and therefore denies the same.

rrr. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph rrr and therefore denies the same.

sss. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph sss and therefore denies the same.

ttt. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ttt and therefore denies the same.

uuu. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph uuu and therefore denies the same.

vvv. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph vvv and therefore denies the same.

www. Denied.

The '459 Patent, PCT, and EP Applications

xxx. Denied.

yyy. USEI admits that the '459 Application and the '313 Application recite the same filing date; recite inventors Petersen, Brown, Sherer, and Lo; and recite the same assignee. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph yyy and therefore denies the same.

zzz. USEI admits that European Patent Application EP0607412 ("EP0607412") recites PCT Application PCT/US1993/07056. USEI denies that European Patent Application EP0607412 was filed on February 25, 1994. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph zzz and therefore denies the same.

aaaa. USEI admits that the '313 Application recites the same examiner as the '459 Application. USEI admits that the Federal Circuit issued a ruling in *McKesson Info. Solutions, Inc. v. Bridge Med., Inc.*, 487 F.3d 897, 925 (Fed. Cir. 2007). The ruling speaks for itself. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph aaaa and therefore denies the same.

bbbb. The '313 Patent and the '459 Patent speak for themselves. USEI denies the remaining allegations in paragraph bbbb.



cccc. USEI admits that the '459 Application file history contains a Notice of Allowability dated October 14, 1993. The Notice of Allowability speaks for itself.

dddd. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph dddd and therefore denies the same.

eeee. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph eeee and therefore denies the same.

ffff. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ffff and therefore denies the same.

gggg. Denied.

hhhh. USEI admits that the '313 Patent recites Petersen, Brown, Sherer, and Lo as named inventors. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph hhhh and therefore denies the same.

iiii. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph iiii and therefore denies the same.

jjjj. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph jjjj and therefore denies the same.

kkkk. Denied.

The '782 Patent

llll. Denied.

mmmm. USEI admits that Application No. 07/907,946 (the '782 Application) recites July 2, 1992 as its filing date and Eric H. Willgoos as a prosecuting

attorney. USEI further admits that the '782 Application recites the same assignee as recited by the '872 Application. USEI denies the remaining allegations in paragraph mmmm.

nnnn. USEI admits the '313 Application file history recites a different examiner than recited by the '782 Application file history.

oooo. Denied.

pppp. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph pppp and therefore denies the same.

qqqq. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph qqqq and therefore denies the same.

rrrr. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph rrrr and therefore denies the same.

ssss. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ssss and therefore denies the same.

tttt. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph tttt and therefore denies the same.

uuuu. Denied.

The '313 PCT and EP Applications

vvvv. Denied.

www. USEI admits that the European Patent Application EP0696462 ("EP0696462") and the '313 Application recite Brown, Sherer, and Lo as named inventors. USEI further admits that EP0696462 recites PCT Application PCT/US1993/07027. USEI denies that EP0696462 was filed on February 25,

1994. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph www and therefore denies the same.

xxxx. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph xxxx and therefore denies the same.

yyyy. The '313 Patent and EP0696462 speak for themselves. USEI denies the remaining allegations in paragraph yyyy.

zzzz. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph zzzz and therefore denies the same.

aaaaa. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph aaaaa and therefore denies the same.

bbbbb. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph bbbbb and therefore denies the same.

ccccc. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ccccc and therefore denies the same.

ddddd. Denied.

Intel 82586 local area network coprocessor

eeeee. Denied.

fffff. U.S. Patent 5,299,313 ("313 Patent") speaks for itself. USEI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph fffff and therefore denies the same.

ggggg. USEI is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph ggggg and therefore denies the same..

hhhhh. Denied.

iiii. Denied.

jjjj. Denied.

kkkkk. Denied.

llll. Denied.

mmmmm. Denied.

nnnnn. Denied.

ooooo. USEI admits that the '313 Application file history contains a Notice of Allowance dated September 21, 1993. The Notice of Allowance speaks for itself.

USEI denies the remaining allegations in paragraph ooooo.

ppppp. Denied.

### **DEFENSES**

Further answering the Counterclaims, USEI asserts the following defenses. USEI reserves the right to amend its answer with additional defenses as further information is obtained.

#### **First Defense**

Intel's Counterclaims fail to state a claim upon which relief can be granted.

#### **Second Defense**

Intel's Counterclaims are barred, in whole or in part, under the doctrines of waiver and estoppel.

#### **Third Defense**

Intel's Counterclaims are barred, in whole or in part, under the doctrine of unclean hands.

**PRAYER FOR RELIEF**

USEI denies that Intel is entitled to any relief in this action. In addition, USEI prays for the following relief against Intel:

A. A judgment that Intel has directly infringed the '459 Patent, contributorily infringed the '459 Patent, and/or induced infringement of the '459 Patent;

B. A judgment that Intel has directly infringed the '872 Patent, contributorily infringed the '872 Patent, and/or induced infringement of the '872 Patent;

C. A judgment that Intel has directly infringed the '094 Patent, contributorily infringed the '094 Patent, and/or induced infringement of the '094 Patent;

D. A judgment that Intel has directly infringed the '313 Patent, contributorily infringed the '313 Patent, and/or induced infringement of the '313 Patent;

E. An award of all damages recoverable under the laws of the United States and the laws of the State of Texas in an amount to be proven at trial;

F. An award of treble damages pursuant to 35 U.S.C. § 284 against Intel as a result of Intel's willful infringement;

G. A preliminary, and thereafter permanent, injunction enjoining and restraining Intel and their officers, directors, agents, servants, employees, attorneys, and all others acting under, by or through them, from directly infringing, contributorily infringing, and inducing the infringement of the '459 Patent, as set forth herein;

H. A preliminary, and thereafter permanent, injunction enjoining and restraining Intel and their officers, directors, agents, servants, employees, attorneys, and all others acting under, by or through them, from directly infringing, contributorily infringing, and inducing the infringement of the '872 Patent, as set forth herein;

I. A preliminary, and thereafter permanent, injunction enjoining and restraining Intel and their officers, directors, agents, servants, employees, attorneys, and all others acting under, by or through them, from directly infringing, contributorily infringing, and inducing the infringement of the '094 Patent, as set forth herein;

J. A preliminary, and thereafter permanent, injunction enjoining and restraining Intel and their officers, directors, agents, servants, employees, attorneys, and all others acting under, by or through them, from directly infringing, contributorily infringing, and inducing the infringement of the '313 Patent, as set forth herein;

K. A judgment and order requiring Intel to pay USEI pre-judgment and post-judgment interest on the full amounts of the damages awarded;

L. A judgment requiring Intel to pay the costs of this action (including all disbursements) and attorneys' fees as provided by 35 U.S.C. § 285, with prejudgment interest; and

M. Such other and further relief as this Court may deem just and equitable.

**JURY DEMAND**

USEI demands a trial by jury on all triable issues in this action.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted, this 21st day of July, 2010.

ROBBINS, GELLER, RUDMAN & DOWD LLP

*/s/ Peter M. Jones*

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 21, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record.

/s/ Peter M. Jones

Peter M. Jones